IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6983 & 6984 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KALUBHAI BHAGVANBHAI KARMATA MINOR - THRO.HIS FATHER

Versus

MAMLATDAR TALALA (GIR)

Appearance:

1. Special Civil Application No. 6983 & 6984 of 2002

MR K.G.Vakharia, Sr.Counsel with

TUSHAR MEHTA for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-4

Mr.H.P.Raval for Respondent No. 5

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 04/09/2002

ORAL (COMMON) JUDGEMENT

Rule. Mr.Raval Waives service of rule on behalf

of respondents. With the consent of parties the matter is taken up for final hearing today.

2. Both these petitions arise against the order, dated 20.4.02 passed by the Mamalatdar, Talala whereby the certificate for ST are denied to the petitioners. Since the facts are common, and the issue is also common, and the petitioners are real brothers, both these petitions are disposed of by this common judgment.

3. There is common contention that the forefathers of the petitioners were residing in nes of Gir and they are belonging to Rabari community. The Govt declared that those Rabaris residing in the nes Gir forest area in the year 1956, i.e. on 29.10.1956 they are to be treated as Scheduled Tribe for the purpose of reservation. It has been contended on behalf of petitioners that Bhagwan Karmata who is the father of the petitioner is granted certificate of ST and the petitioners applied for issuance of certificate to Mamalatdar, Talala for the purpose of his sons It has been submitted that once again applications were submitted in prescribed form by producing all necessary documents including vigat darshak card and the certificate issued in favour of father of the petitioners. The Mamalatdar, Talala placed the matter before the Committee and the said committee had also given opportunity of hearing on 11.4.02. However, it is the contention of the petitioners that all necessary documents were produced, but in the order dated 20.4.02 which is impugned in the present petitions it has been contended that no documents are produced and the Committee after deliberations declined the request for grant of certifications and under the circumstances the present petitions.

4. Mr.Vakharia, Ld.Sr.Counsel appearing with Mr.Mehta has submitted that the Division Bench of this court in LPA No.1670/99 and allied matters as per judgment dated 31.8.02 has interalia observed that the entries in the Vigat Darshak Card are one of the relevant considerations and there must be cogent material to disbelieve and or to discard the evidence of Vigat Darshak Card. However, Mr.Vakharia submitted that in the impugned order there is no discussion whatsoever either for discarding the evidence of Vigat Darshak Card or even for not considering the case of the petitioners on the basis that the father of the petitioners had already been issued certificate on the basis that Bhagwan Karmata was residing in nes of Gir. Mr.Vakharia submitted that since there is no discussion of the judgment of the learned single judge as well as the Division Bench of this court

the order is arbitrary on the face of it and deserves to be quashed and set aside. Mr.Vakharia lastly submitted that since this is a matter pertaining to the education of students even if this court remands the matter for the purpose of reconsideration the time bound schedule may be ordered so that the petitioners can have the benefit of certificate, if ultimately granted by the authority.

5. On behalf of the respondents affidavit in reply has been filed and on internal page 3 of the affidavit in reply it has been stated as under:

> "It is submitted that the committee for issuing certificate of Scheduled Tribe decided that the petitioner and his sons are not staying in the area of Gir, in the scattered are of dwelling huts forest area of Alech or Barda prior to 29.10.1956. It is submitted that the committee has given personal hearing on 11.4.2002 and before the committee no substantive evidence has been produced for the purpose of their residence in the scattered are of dwelling huts situated in the area of Gir, Alech or Barda forest. It is submitted that therefore no evidence has been produced before the Committee and, therefore, the Committee after giving full consideration to his application and after giving opportunity of hearing rejected the application of the petitioner for obtaining certificate of ST for his sons."

It is also stated on internal page 4 at para 7 of the

affidavit in reply as under:

> "It is submitted that only on the basis of 'Vigat Darshak Card' it would not be necessary to issue cast certificate and it is not the instructions of the Govt."

It is also stated on internal page 5 at para 8 as under"

> "It is submitted that 'Vigat Darshak Card'is not only conclusive proof and issuance of certificate of cast on that basis is not proper and valid."

In substance, the contention on behalf of the respondents is that the respondents can not solely rely on the Vigat Darshak Card and therefore the certificate is not issued.

6. The last contention of Mr.Vakharia is that the

order does not record the reasons for not dealing with the evidence produced on behalf of the petitioners. This court in Spl.C.A.No.5349/00 as per the order dated 4.4.02 while considering the observations of the Division Bench in LPA No.1670/99 and other matters has observed that "the Vigat Darshak Card' could be one of the considerations and therefore it has to be considered together with the other documents. The Division Bench of this court in LPA No.1670/99 and allied matters had observed relevant portion of which is as under:

> "It is very clear that the Vigat Darshak Card is certainly a material which can be said to be relevant for the purpose of deciding the question of caste certificate by the Mamalatdar. It has to be agreed on all hands that in fact the job was entrusted by a Govt Resolution to Mr.Malkan so as to take up the exercise of collecting the details about persons of the Rabari community who were residing in the nes of the forests and on the basis of such study if the Tribal Development Department had issued the Vighat Darshak Cards and if made certain entries, which otherwise could not be readily available to persons, the same can not be ignored altogether and they must form a relevant material in the nature of guidelines to the concerned committee and the Mamalatdar for the purpose of issuing the caste certificate, but we have no hesitation in holding that by no means such Vigat Darshak Card can be said to be conclusive that the holder of such a card is a member of Scheduled Tribe. Of course, the correctness of the entries made therein have to be accepted by the Mamalatdar to be correct unless the Mamalatdar has any other material to disbelieve such entries. After all this exercise at the Govt was undertaken only to ensure that the persons claiming eligibility for such certificate have ready material with them in support of their claim and the material such as Naswadi Receipts which may not be readily available and therefore the details thereof may be reflected in such Vigat Darshak Cards with the available particulars."

It is further observed as under:

> "In ordinary course, there is no reason to doubt or disbelieve the correctness of those entries but in a given case even if taking such entries to be correct on their face value, it may be

> found that the holder of such Vigat Darshak Card is not entitled to certificate of being a Schedule Tribe and in a given case if it found that such entries have been wrongly reflected in the Vigat Darshak Card and the Mamalatdar has any reason or material to doubt the correctness of such entries, the burden lies upon him to confront the applicant with the reasons and material to disbelieve such entries and the Mamalatdar or the concerned committee may enter upon such an exercise and to that limited extent we are of the view that the conclusion arrived at by the learned single judge deserves to be modified."

7. In view of the aforesaid observations, it is clear that there must be cogent material with the Mamalatdar to disbelieve the entries reflected in the Vigat Darshak Card and in any case the said aspect for such purpose is required to be informed to the concerned applicant by the authority and thereafter the decision shold be rendered. A perusal of the impugned order shows that no reasons whatsoever have been recorded for discarding the evidence of Vigat Darshak Card and even in the affidavit in reply the said aspect is not reflected and the whole burden is thrown upon the applicant as if the applicant had to prove the material for the purpose of discarding or not relying on the Vigat Darshak Card. In my view, such approach on the part of the authorities is running contrary to the observations of the Division Bench in the above referred Letters Patent Appeal No.1670/99 and in my view the authority should be directed to decide the issue on the question of issuance of certificate keeping in view the observations made by the Division Bench referred to hereinabove and also the material which may be available for discarding the entries in the Vigat Darshak Card.

8. In the result, the order dated 20.4.2002 which is confirmed in the Revision Application dated 6.7.02 at annexures A and B are quashed and set aside with the direction that the respondent authorities shall reconsider the matter afresh keeping in view the above referred observations made by the Division Bench in the aforesaid Letters Patent Appeal No.1670/99 and the observations made by this court in this judgment and shall render decision within a period of two weeks from the date of receipt of writ of this court.

9. Both the petitions are allowed to the aforesaid extent. Rule in each petition is made absolute

accordingly. There shall be no order as to costs.

4.9.02   (JAYANT PATEL,J)